

Bill 42 (2017)
Additional Testimony

MISC. COM. 541

LM

October 18, 2018

Aloha Council Members,

My name is Charles Carole, a member of the Financial Accountability for Rail Mass Transit Association.

In September of 2017, Act 1 required the State Auditor to do a financial audit of the HART operations from 2012 to now to determine the financial accountability of their cost of the rail construction. HART has not cooperated with the State Auditor not giving him necessary figures and information of their construction costs. The Mayor and the Council should bring pressure on HART to give the necessary information to the State Auditor.

The City must inform FTA that the City is waiting until the State Auditor issued his report to the State Legislature in late December 2018 or January 2019 at the start of the 2019 Legislature. At the same time, the City will be issuing its bonds to make payment for \$44 million dollars to HART for administration cost to HART.

The City should also inform FTA that the additional \$134 million dollars for rail will be taken up by the 2019 Legislature and the City in early 2019. FTA should not take any negative action before these things.

Mahalo and Good Luck,

Charles Carole
1310 Heulu Street, Apt. 1002
Honolulu, HI. 96822

FINANCIAL ACCOUNTABILITY...WHERE???????
FOR RAIL MASS TRANSIT ASSN.

1. Minutes of the recently held HART Board reveal a condition of chaos among its members attending that gathering. References are made to lack of understanding, questions as to completions, payments, future completion dates and more.
2. Following these random questions, a call is made for an "Executive Session". This means that the meeting is closed and the content (minutes) of the session are not available for review.
3. Before allowing the executive session, the member must disclose the main reasons for seeing the closed session.
4. One member stated that he there is an immediate concern with respect to members IMMUNITY and LIABILITY.
5. That statement, which was the accepted basis for the executive session, clearly states the members concern for their financial responsibility if any loses or claims were due to their personal or joint responsibility.

Festimony - John Carroll

6. Even more riveting is the call for checking on whether or not the members as a whole or individually are entitled to IMMUNITY because of their actions, negligence or neglect.
7. The fact that the members are this concerned raises the specter of a massive project totally out of control, mismanaged and headed for total failure.
8. Because of this clearly revealed financial disaster, it is apparent that this project should be stopped, all contracts held in abeyance of completion of forensic audit.
9. This Forensic Audit should be by Court Order from a Federal Court.
10. This should be sought by the Governor through the State Attorney General immediately!!!
11. The audit can pin point hard evidence of negligence, gross negligence, poor planning, contract breaches and failures, fraud, collusion, misrepresentation and fraud.
12. It can unearth all the reasons why this project is a theft of tax payers' dollars and show clearly that it is a total failed project.

13. It can show who should be jailed and why.

Specifically, Origin of all funds, Federal, County, etc., must be revealed together with the named payee on all disbursements. The distribution chain must be proven and evidence supporting the individual disbursements must be irrefutable and accepted as valid by the Court ordering the audit.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Council Website

October 17, 2018

Honorable Ernie Martin, Chair
Honorable Kimberly Marcos Pine, Vice Chair
Honolulu City Council
Honolulu, Hawaii

SUBJECT: SUPPORT OF BILL 42 (2017), PROPOSED CD1, FUNDING FOR TRANSIT. Allowing for greater flexibility in the sources of monies to be used for the capital cost of the Honolulu Rail Transit Project
Legislative Matters Committee Meeting: Weds., October 17 at 1:30 p.m.
Special Full Council Meeting: Weds., October 17 at 3:30 p.m.

Dear Chair Martin, Vice Chair Pine and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over 500 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is writing in **support** of Bill 42 (2017), Proposed CD1 which would satisfy the Federal Transit Authority's request that the \$44M in City and County of Honolulu funding will be fully committed to the project. While there were other alternatives that could have been considered prior to the 2017 legislative session to ensure such funding was available through other resources – this option is the only one available at this time. The added provision that specifies that the funding be used for "HART Admin" and "Additional Funds" as specified in the Baseline Financial Plan (Figure 6-1) of the Recovery Plan dated September 15, 2017, will further ensure that if any city funds are necessary that it be limited in use. Therefore, it is imminent that Bill 42 (2017), Proposed CD1 pass this Committee, the Council and move on for full passage.

The GCA supports the Honolulu Rail Transit project and efforts to ensure the project is completed in its entirety and as planned. The funding of the project is one of the most crucial components to make certain that the project is delivered to the City and County of Honolulu and its residents. Any stoppage of work on the project will have a devastating impact on hundreds local families who are working on the project itself as well as the many transit oriented initiatives around rail.

The GCA continues to support the Honolulu Rail Transit Project together with the concerted efforts of all parties involved to plan and construct the rail transit project. All parties must continue to work together to get this project delivered to the residents of the City and County of Honolulu. Rail will provide the most reliable, cost-efficient and convenient transportation pipeline between urban Honolulu and West Oahu.

GCA appreciates the opportunity to share its testimony.

TO: Ernest Martin, Chair of Committee on Legislative Matters
FROM: Frank Genadio of Financial Accountability for Rail Mass Transit Association
SUBJECT: Bill 42 (2017), Funding for Transit, and Proposed CD1, and
Resolutions 18-127 and 18-132
DATE: October 17, 2018

Mr. Chair:

Please accept this testimony in opposition to Bill 42 and any CD associated with it that involves using city funds for rail development. It appears that the CD addresses use of city funds to cover 2017 Recovery Plan elements for \$160 million in “City Subsidy—HART Admin” and \$54 million in “Additional Funds.” Will this open “Pandora’s Box” and become the first step toward giving Mayor Kirk Caldwell a “blank check” for later adding fees and increasing O’ahu property taxes for rail construction and systems procurement?

The section of Ordinance 07-001 stating that “capital cost and any interest to finance that capital cost shall be paid entirely from general excise and use tax surcharge revenues, interest earned on the revenues, and any federal, state, or private revenues” must remain as written. The City Council has ignored many testimonies in the past clearly stating that there are enough funds being collected to easily complete the minimum operable segment (MOS)—provided that the rail project’s technology be converted to urban magnetic levitation (maglev). I must remind you that the 2006 council approved “a fixed guideway system as the locally preferred alternative,” NOT a steel wheels on steel rails system. That council also reserved “the right to select the technology of the fixed guideway system.”

The 2008 council, in effect, abrogated its responsibility and allowed (by ballot resolution) then mayor Mufi Hannemann to “engineer” a steel wheels-only competition that has resulted in an over-budget, behind-schedule rail debacle that is now (justifiably) referred to by many critics as a “boondoggle.” Taxpayer funds were used in 2008 for a “disinformation” campaign equating “rail” with steel wheels; Salt Lake residents went to the ballot box believing that the rail guideway would go through their community (with the duplicitous council changing the routing to the airport almost immediately after the election); and a 2,000-page draft environmental impact statement was released during the weekend before Election Day that dismissed other technologies in a paragraph. That EIS eliminated maglev in one line as unproven in the United States. (NOTE: The maglev referred to is the Linimo in Nagoya, which was a potential competitor for the fixed guideway in Honolulu. That system has now been in revenue operations for 13 and a half years—and has been joined by proliferating urban maglevs in China and Korea.)

Efforts continued to be made for conversion of rail technology—including within the council—even before the Full Funding Grant Agreement (FFGA) was signed in 2012. By then, the 2006 \$3.6 billion estimate for the MOS had escalated to \$5.12 billion. The city’s “mantra” continued to be that it was too late to change. The taxpayers were forced to watch as the costs continued to escalate, to \$6.56 billion in 2015 and then \$8.165 billion estimated in 2017 (that federal officials believe is short by \$134 million). Rail critics, who complained in 2012 that costs could reach \$7 billion, now believe the MOS will come in well over \$10 billion.

In 2017, Mayor Caldwell and the Honolulu Authority for Rapid Transportation (HART) determined that the total collection estimate of \$6.8 billion was not adequate and went to the Hawaii State Legislature for new funding authorities in order to complete the MOS. My testimony to the special session opposing new legislation stated that there were sufficient funds to complete the project through conversion to an American-designed urban maglev. Others opposing new funding included Mr. Hannemann, now working for the Hawaii Lodging and Tourism Association, and Ed Case, who worked for Outrigger at the time; nevertheless, the legislation passed and became Act 1 of 2017. HART has estimated the new collection estimate through 2030 will be \$9.3 billion—and it still seems insufficient for completing the MOS.

About the same time as the special session, the city's financial recovery plan for rail was submitted to the Federal Transit Administration (FTA). Up to that point, \$806 million of \$1.55 billion in FFGA-obligated funds had been received by the city. The remaining \$744 million has been withheld as the FTA clearly did not accept the viability of the city's (2017) plan. Whether or not the FTA will accept the latest plan remains to be seen, but the percentage of federal funds involved in rail development has shrunk from 30 percent to below 20 percent; the other funding—including ALL that will be required in the future for rail operations and maintenance (O&M)—will have to come from local sources.

Act 1 did more than extend the rail surcharge and add funding (for rail) from the transient accommodations tax. It called for a financial audit that is currently being conducted by the State Auditor, who has expressed his displeasure with HART's lack of cooperation. Calls have now been made for stronger measures including a forensic audit.

Act 1 also specified identifying “alternative routes and development options and the projected costs for each alternative route and development option for the Middle Street to Ala Moana segment of the Honolulu rail transit project.” This provision must include a full exploration of using American-designed urban maglev to “rescue” the rail project. This plan was fully described in the September 14, 2018 edition of Honolulu Civil Beat under the title “**Rescue Oahu's Rail Project with Magnetic Levitation Technology.**” In effect, it states that it is not too late to change, with conversion starting at the 12-mile point of the guideway (probably reached sometime next year); that the available \$9.3 billion will be enough to not only use the existing guideway (as well as delivered steel wheels trains and new maglevs) and complete the MOS but also develop an extended locally preferred alternative (LPA+) that includes service eastward to Waikiki and the University of Hawaii (UH) campus in Manoa and westward beyond West Kapolei to Ko Olina; added (maglev) trains that will enable FFGA-required three-minute service during peak hours; a considerable increase in ridership, a key criterion of rail system effectiveness; and much more cost-effective O&M costs (i.e., for a 30-year life cycle, just for the MOS, maglev savings would run from at least \$2.5 billion with zero inflation to over \$4 billion at three percent).

The FTA, which has been part of the problem to date—including its demand for the use of \$44 million in city funds for rail development—should not be the “target” for a maglev rescue plan. Instead, the city (including members of this City Council) should negotiate directly with the U.S. Secretary of Transportation and the Chair of the U.S. House of Representatives Transportation and Infrastructure Committee. Those officials control infrastructure funding (and the FTA) and

should be amenable to a plan that shows a far superior course of action using 21st Century American Maglev 2000 technology that will get much more “bang for the buck” than the current plan that will use obsolescent steel wheels technology. The current train system requires a larger, more physically (as well as visually) imposing guideway that increases the need for property acquisition and condemnation. This is a plan that is financially deficient vis-à-vis implementing the operationally superior maglev.

The council also has been part of the problem by not examining alternatives and by making uninformed statements such as maglev costing ten times what steel wheels would cost. One must ask how many times the council has accepted rail development estimates from the city in the past, only to find later that they were “low-balled.” Maglev costing previously presented to this council was prepared with the help of the UH College of Engineering, an estimate accepted (and even deemed conservative) by the principals of Maglev 2000, the American company that could—if requested—propose a conversion plan to the City and County of Honolulu. That company (in which, it is necessary to state, I have no current or planned future financial attachment) is prepared to work with local officials as well as already contracted construction companies and the rail system supplier to ensure a smooth transition to maglev.

A pause is needed while the audit(s) and alternatives are fully explored. The FTA’s deadline of 20 November is premature before completion of the above and it is recommended that the city request an extension until February 2019. Any attempt to authorize the issuance of general obligation (GO) bonds also is premature and action on Resolutions 18-127 and 18-132 should be deferred. O’ahu residents deserve full and transparent financial accountability before the council considers GO bonds for “bridge” funding of rail.

Local taxpayers cannot afford and do not want new fees or taxes for rail. They need to see fiscal responsibility from their elected officials and a vision of the future that does not include the (almost inevitable) return by the city administration and HART to the Hawaii State Legislature for another rail “bailout” bill when the \$10 billion barrier is breached. It is time for the Honolulu City Council to show due diligence and use its budgetary powers to regain control of the rail project. This committee should reject Bill 42 and any proposed CD as the first step toward preventing Honolulu from becoming the “poster child” for how not to develop municipal transit. Mahalo and Aloha.

Frank Genadio
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HAWAII LODGING & TOURISM
ASSOCIATION

Testimony of

Mufi Hannemann
President & CEO
Hawaii Lodging & Tourism Association

Honolulu City Council
Committee on Legislative Matters

Wednesday, October 17, 2018

Bill 42 (2017) CD1 – Funding for Transit
*Allowing for greater flexibility in the sources of monies to be used for the
capital cost of the Honolulu Rail Transit Project.*

Chair Martin and members of the committee,

The Hawai'i Lodging & Tourism Association—nearly 700 members strong, representing more than 50,000 hotel rooms and nearly 40,000 lodging workers—supports Bill 41 CD1 (2017) as a means to help fund the construction of the Honolulu Rail Project.

The City is at a point where it needs to demonstrate it is exercising greater fiscal responsibility to ensure the completion of rail in a timely accountable manner. Speaking as the current President and CEO of the Hawaii Lodging and Tourism Association with thousands of island residents employed by the visitor industry in Waikiki, we look forward to having a rail system that will be part of a multi-modal network of transportation options. It will play an integral role in enabling our hard working hospitality employees to get to and from work, as well as create more housing options through transit oriented development.

As a former Honolulu Mayor and City Councilmember, the City needs to show that it is not always looking to the State's coffers to fund the rail project. At present, the FTA is requiring the City to commit the \$44 million stated in HART's previous financial plan, and we need to ensure that this requirement is fulfilled so that we don't risk losing the \$745 million of the federal grant balance. It is my understanding that FTA was given assurances by City officials in an earlier meeting with them this year that this would get done.

Therefore, we urge the mayor's administration and the city council to work together to support HART and its efforts to make sure that we successfully move this project forward. As someone who is very familiar with the FTA process, I understand the need for the City to keep its word, produce results and to show that there is appropriate local funding. We have spent too much time letting this project fall to the wayside due to lack of strong leadership. HART is finally in a good place and picking up momentum in advancing the project but they cannot do it alone. On behalf of the Hawai'i lodging & Tourism Association and its members, we support the passage of this measure through both the Committee on Legislative Matters and the Full Council.

Mahalo.

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From: CLK Council Info
Sent: Tuesday, October 16, 2018 9:32 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony

Speaker Registration/Testimony

Name Michele Matsuo
Phone 808-383-7169
Email Michelematsuo@yahoo.com
Meeting Date 10-17-2018
Council/PH Committee ExecutiveMatters
Agenda Item Bill 42
Your position on the matter Oppose
Representing Organization
Organization Timeout Honolulu
Do you wish to speak at the hearing? Yes

Written
Testimony

Bill 42 goes beyond that authorized by vote of the public and all of the council members are aware of this fact. So, I wonder if Approving the use of city funds for rail construction constitutes a kind of ultra vires act by the Council members voting for it which might give rise to personal liability.

In addition, the city and the council is now officially on notice that the projected sea level rise in the coming decades will render the rail line flooded in a projected 11 of the remaining rail stations to be constructed. Professor Maxine Burkett of the Richardson School of Law presented to the Hawaii State Bar Convention and informed those present that there is likely tort nexus for government liability for damages occurring due to approvals given for construction in areas affected by climate change.

There is much construction work required to prepare Oahu for sea level rise. We should stop rail construction before the stations which are projected to flood in the coming years, which would be from the airport to Ala Moana Center.

Thank you for this opportunity to testify.

Testimony
Attachment
Accept Terms
and Agreement

1

OCT 17-2018

ALOHA MY NAME IS RODY NAKAMURA I AM THE PRESIDENT FOR
FINANCIAL ACCOUNTABILITY FOR RAIL MASS TRANSIT ASSOCIATION.

OUR GROUP IS REGISTERED WITH THE DEPT COMERCE AND CONSUMER AFFAIRS

I OPPOSE BILL 42 AND THE FUNDING STOP FOR THIS RAIL PROJECT
REASON

WHERE IS THE FINANCIAL ACCTT AND THE FDRENSIC AUDIT TO PROVE
HOW EVERY DOLLAR WAS SPENT FROM 1.5 BILLION DOLLARS TO
NEAR 9 BILLION DOLLARS.

MAYOR KIRK CALDWELL STATED I AM GOING TO BUILD THE RAIL
ON TIME AND ON BUDJECT.

THIS RAIL PROJECT IS NOT ON TIME AND NOT ON BUDJECT.
IT IS BOON DOGGLE OVER BUDJECT AND BEHIND SCHEDULE.

I AM ASKING HART WHERE DID ALL THE BILLIONS OF DOLLARS
GO OR GONE TO WHOM.

Financial Accountability For Rail Mass Transit Assn. Testimony
Against Bill 42, Bill 42 CD1, Res. 18-127, & Res.18-132

Testimony by former State Senator and City Councilman Rod Tam:

The Financial Accountability For Rail Mass Transit Association Opposes Bill 42, Bill 42 CD1, Resolution 18-127, and Resolution 18-132. At his time, the bills and resolutions are pre-mature before completion of the provision of Act 1 of 2017 Special Legislative Session passed by the State of Hawaii's legislature and Governor David Ige to mandate a completed financial audit on the City & County of Honolulu's steel-on-steel rail due to lack of financial accountability on the on-going construction of the rail.

The other reasons of the Bill 42, Bill 42 CD1, Resolution 18-127 and Resolution 18-132 being pre-mature for adoption by the City Council are:

1. The original funding for the construction of the city's rail was only by State of Hawaii government revenues (1/2% excise tax and 1% hotel room tax) not by city revenues, otherwise Hawaii's taxpayers would have opposed the construction of the rail.
2. On May 19, 2017 letter to Leslie Roger, Region IX Administrator of the U.S. Federal Transit Administration (FTA) our association requested the FTA to conduct a financial audit on the City & County of Honolulu's HART spending of federal taxpayers' dollars due to the lack of financial accountability. The association is awaiting a response.
3. On July 3, 2018 our association sent a letter to State of Hawaii Governor David Ige to withhold state tax revenues (1/2% excise tax and 1% hotel room tax) pending completion and approval showing no wrongdoings of Act 1's financial accountability audit which is due to be completed by December 31, 2018. The association is awaiting a response.
4. On October 3, 2018 our association sent letters to U.S. Senator Mitch McConnell, Senate Majority Leader, U.S. Senator John Thune, Chairman of the commerce, Science, and Transportation Committee, U.S. Representative Paul Ryan, Speaker of the House of Representatives, and U.S. Representative Bill Shuster, Chairman of the Transportation and Infrastructure Committee to requesting for a managerial and financial audit on the spending of Federal taxpayers' dollars due to the lack of financial accountability. The association is awaiting a response.

Page 2 – Testimony Against Using City Funds For Rail

In closing, the basis of the Financial Accountability For Rail Association's opposition to the adoption of any legislation to further fund the city's rail is because the lack of financial accountability. The only way to satisfy Hawaii's taxpayers disapproval of the city's financial accountability is to have financial audits done by the State of Hawaii's auditor and the U.S. Congress.

Thank you.